

# ONLINE DISPUTE RESOLUTION IN CROSS-BORDER COMMERCIAL DISPUTES: CHALLENGES AND OPPORTUNITIES FOR INDIA IN THE ERA OF VIRTUAL ARBITRATION

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## Abstract

The rapid digitalisation of dispute resolution mechanisms, especially in the wake of the COVID-19 pandemic, has brought Online Dispute Resolution (ODR) to the forefront of international commercial arbitration. While global arbitral institutions have adapted quickly to the challenges of virtual hearings, digital document submissions, and AI-assisted case management, India remains at a crucial juncture. This research proposal explores the promise and pitfalls of adopting ODR mechanisms in cross-border commercial disputes involving Indian parties.

The study begins by contextualising the emergence of ODR within international legal frameworks such as the UNCITRAL Model Law and the New York Convention, assessing how digital proceedings interact with traditional notions of party autonomy, procedural fairness, and enforceability of arbitral awards. Special attention is paid to the legal and infrastructural preparedness of India to host or participate in virtual arbitration proceedings, drawing comparisons with jurisdictions like Singapore and the United Kingdom.

This research proposes a doctrinal and comparative methodology to analyse statutory frameworks, institutional rules, and case law, alongside select policy documents and industry reports. The aim is to critically evaluate India's existing arbitration ecosystem and identify the normative, regulatory, and practical reforms necessary to integrate ODR into its cross-border dispute resolution architecture. Ultimately, the study aspires to offer a legally sound and context-sensitive roadmap for India's emergence as a reliable hub for virtual arbitration in the digital age.

**Keywords:** Online Dispute Resolution, Cross-Border Commercial Arbitration, Virtual Hearings, India Arbitration Law, UNCITRAL Model Law, New York Convention, Procedural Fairness, Party Autonomy, Digital Arbitration Infrastructure, Enforceability of Arbitral Awards, Cybersecurity in Arbitration, Comparative Arbitration (Singapore and UK).

## 1. Introduction

In recent years, particularly following the global disruption caused by the COVID-19 pandemic, there has been a marked shift in the way legal systems and arbitral institutions manage commercial disputes. What was once considered an ancillary or experimental mechanism—Online Dispute Resolution (ODR)—has now emerged as a central pillar of modern arbitration practice. The transition from physical hearing rooms to digital platforms has not merely been a question of technological convenience but a structural rethinking of how justice can be delivered efficiently, securely, and across borders.

This transformation is particularly significant in the context of international commercial arbitration, where cross-border transactions often necessitate fast, confidential, and enforceable dispute resolution. Virtual arbitration, enabled through ODR tools, promises to lower costs, increase procedural flexibility, and make international arbitration more accessible, especially for parties from developing economies. However, this digital shift also brings to light serious challenges concerning data protection, cybersecurity, party consent, enforceability of awards, and the risk of procedural imbalance due to digital illiteracy or infrastructural disparity.

India's engagement with ODR remains in a state of evolution. While the Arbitration and Conciliation Act, 1996 (amended in 2015, 2019 and 2021) provides for flexibility in procedure, it does not yet offer comprehensive guidance on virtual arbitration proceedings. Indian arbitral institutions like MCIA have begun adopting digital tools, and private platforms offering ODR services are expanding in number, but questions persist regarding uniformity, credibility, and enforceability, especially in cross-border contexts. Moreover, unlike jurisdictions such as Singapore or the UK, India has yet to establish a robust policy or legislative blueprint to integrate ODR fully within its dispute resolution framework.

This research seeks to explore whether India's current arbitral infrastructure, legal framework, and policy orientation are adequately equipped to meet the demands of cross-border digital arbitration. It further seeks to identify the gaps and opportunities that exist in this transition toward virtual arbitration and to recommend legal and procedural reforms that can strengthen India's position in the emerging global order of ODR-based dispute resolution.

## 2. Research Objectives

- A. Critically examine the development of Online Dispute Resolution (ODR) in the context of cross-border commercial arbitration, with a focus on post-pandemic shifts in arbitral practices.
- B. Evaluate the current legal and institutional frameworks governing international commercial arbitration in India, and their adaptability to ODR-based mechanisms.
- C. Identify procedural, technological, and jurisdictional challenges to the use of ODR in cross-border disputes involving Indian parties.
- D. Conduct a comparative legal analysis of ODR practices in leading arbitral jurisdictions such as Singapore and the United Kingdom.
- E. Formulate doctrinal and institutional recommendations to facilitate the seamless integration of Online Dispute Resolution (ODR) into India's cross-border arbitration framework, with particular emphasis on the recognition, enforcement, and procedural legitimacy of virtual arbitral awards.

## 3. Research Questions

- A. What are the essential legal principles and procedural safeguards that govern the use of ODR in cross-border commercial arbitration?
- B. How prepared is the Indian legal and institutional framework to support fully or partially virtual arbitral proceedings in international disputes?
- C. What are the primary risks and barriers—legal, technological, and procedural—facing parties who opt for ODR in India-related cross-border arbitration?
- D. How have other jurisdictions (e.g., Singapore, UK) addressed concerns of due process, enforceability, and security in the adoption of ODR?
- E. What legal and institutional reforms are necessary to enable India to emerge as a credible seat for ODR-based arbitration?

## 4. Literature Review

The emergence of Online Dispute Resolution (ODR) as a viable method for resolving cross-border commercial disputes has generated a growing body of academic scholarship in the domains of arbitration, technology, and international commercial law. While initial discourse predominantly revolved around consumer and e-commerce disputes, the COVID-19 pandemic catalysed a paradigmatic shift, forcing both institutional and ad hoc arbitrators to explore digital alternatives to in-person arbitration. Yet, despite these global developments, the literature on India's preparedness to embrace ODR in the context of international commercial arbitration remains nascent.

### 4.1 Global Developments and Theoretical Foundations

Maxi Scherer's scholarship has been pivotal in theorising the legal implications of remote arbitration and evaluating how virtual hearings align with the fundamental tenets of due process and party autonomy in international arbitration<sup>1</sup>. Her framework addresses key concerns such as digital fatigue, witness credibility, and procedural

equality in virtual environments. **Pablo Cortés** and **Arno Lodder** have similarly highlighted the need for legal design principles in constructing trustworthy and accessible ODR platforms, stressing the role of transparent algorithms and enforceability standards<sup>2</sup>. Thomas Schultz has offered a more critical lens, arguing that the legitimacy of arbitration institutions may be undermined by an overreliance on digital tools that weaken traditional procedural formality and symbolic legitimacy<sup>3</sup>. These works collectively recognise the transformative potential of ODR while warning against the erosion of procedural safeguards and institutional trust.

## 4.2 Institutional Responses and Comparative Perspectives

<sup>1</sup> Maxi Scherer, 'Virtual Hearings in International Arbitration: A Procedural Revolution' (2020) 36(3) *Arbitration International* 431.

<sup>2</sup> Pablo Cortés and Arno R Lodder, 'Digital Justice: Online Dispute Resolution in the EU' (2014) 21(1) *Maastricht Journal of European and Comparative Law* 14.

<sup>3</sup> Thomas Schultz, 'Legitimacy Concerns of International Arbitration and the Use of Technology' (2018) 36(2) *Oxford Journal of Legal Studies* 344.

In response to the global shift towards virtual proceedings, arbitral institutions have introduced explicit provisions to enable digital hearings. The London Court of International Arbitration (LCIA) revised its Rules in 2020 to permit virtual hearings and digitised filings, reflecting a conscious effort to adapt procedural flexibility to contemporary technological realities<sup>4</sup>. The International Chamber of Commerce (ICC), in its 2021 Arbitration Rules, also recognised remote procedures and stressed the importance of party agreement and tribunal discretion<sup>5</sup>. Asian arbitral centres have been particularly innovative; the Singapore International Arbitration Centre (SIAC), supported by the Singapore International Commercial Court and legislative reforms under the International Arbitration Act, has emerged as a regional leader in tech-forward arbitration<sup>6</sup>. Comparative scholarship has praised Singapore's balance between innovation and procedural integrity—a model that India's arbitration institutions have yet to emulate.

## 4.3 Indian Context and Scholarship

Within India, scholarly engagement with ODR remains limited. Legal scholars such as **Srikrishna Deva Rao** and **Pratik Datta** have acknowledged the transformative potential of ODR in enhancing access to justice and improving efficiency in commercial disputes<sup>7</sup>. However, mainstream Indian arbitration discourse often relegates ODR to the periphery, viewing it as a technological add-on rather than a structural reform imperative. Institutional developments remain reactive: the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC) have introduced digital filing systems and online hearings, but without accompanying doctrinal commentary or legislative reform<sup>8</sup>.

Policy initiatives—most notably by NITI Aayog, the Vidhi Centre for Legal Policy, and Agami—have laid the groundwork for ODR expansion. Their reports have

<sup>4</sup> London Court of International Arbitration, *LCIA Arbitration Rules (Effective 1 October 2020)*, Art 19.2.

<sup>5</sup> International Chamber of Commerce, *ICC Arbitration Rules (2021)*, Art 26(1).

<sup>6</sup> Singapore International Arbitration Centre, 'Annual Report 2022' <https://siac.org.sg> accessed 30 July 2025.

<sup>7</sup> Srikrishna Deva Rao and Pratik Datta, 'Designing a Future-Ready Online Dispute Resolution Framework in India' (Vidhi Centre for Legal Policy, 2021) <https://vidhilegalpolicy.in> accessed 29 July 2025.

<sup>8</sup> Mumbai Centre for International Arbitration, 'Rules and Procedure Updates (2022)' <https://mcia.org.in> accessed 30 July 2025.

recommended standardised protocols, AI integration, and user-friendly interfaces. However, the focus of these recommendations has largely been domestic dispute resolution, especially in civil, consumer, and MSME disputes<sup>9</sup>. The literature has yet to extend this policy discourse into the realm of international commercial arbitration, particularly from a doctrinal or comparative perspective.

## 4.4 Summary of Identified Issues

While global literature has matured in its analysis of virtual arbitration frameworks, India's academic and institutional discourse remains underdeveloped in key areas: doctrinal coherence, legislative readiness, enforcement feasibility, and jurisdictional clarity in cross-border ODR disputes. Additionally, the implications of digital exclusion—such as unequal access to technology, bandwidth issues, and digital literacy gaps—remain marginal in Indian scholarship, despite their relevance to the legitimacy of virtual proceedings.

## 5. Research Gap

Despite the acceleration of digital transformation in international arbitration, there remains a notable absence of doctrinally rich, jurisdiction-specific scholarship evaluating India's readiness to adopt Online Dispute Resolution (ODR) in the context of cross-border commercial disputes. Much of the global literature either focuses on procedural innovations in Western arbitration institutions or addresses ODR's role in low-value domestic and consumer disputes.

As a result, there is a disconnect between international developments and India's current legislative and institutional posture.

While comparative jurisdictions such as Singapore and the UK have embedded ODR- friendly reforms into their arbitration regimes, Indian legislative frameworks—most notably the Arbitration and Conciliation Act, 1996—do not provide detailed procedural guidance on virtual hearings, digital submission, or AI-assisted arbitration<sup>10</sup>. Although the judiciary has permitted remote proceedings during and

NITI Aayog, 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India' (2020) <https://niti.gov.in> accessed 28 July 2025.

<sup>10</sup> Arbitration and Conciliation Act 1996 (India), as amended by the Arbitration and Conciliation (Amendment) Act 2021.

after the COVID-19 pandemic, these developments have not been systematized into the mainstream legal structure for international arbitration<sup>11</sup>.

Moreover, Indian scholarship on arbitration tends to engage with procedural efficiency or institutional reform without analysing how cross-border ODR mechanisms can be harmonised with international obligations under treaties like the New York Convention or UNCITRAL Model Law. There is also insufficient analysis of how India's federal structure, linguistic diversity, and digital divide affect procedural fairness, enforceability, and technological accessibility in ODR settings.

Another critical gap lies in the absence of enforceability frameworks for digital arbitral awards, especially when the arbitration is seated in India but enforced abroad (or vice versa). Jurisprudential uncertainty around the recognition of digital hearings and e-signature-based proceedings also raises questions about due process and finality under Indian law<sup>12</sup>.

Finally, the Indian arbitration ecosystem lacks a dedicated policy or legal framework to address critical concerns like cybersecurity, confidentiality, procedural neutrality, and digital infrastructure standards in cross-border virtual arbitration. Without these mechanisms, India risks being a peripheral participant in the global shift toward digital arbitral justice.

This research intends to bridge these gaps by undertaking a doctrinal, comparative, and normative inquiry into India's legal preparedness for ODR in cross-border disputes, while proposing a harmonised model that aligns domestic legislation with global best practices.

## 6. Methodology

This research adopts a doctrinal and comparative legal methodology, supplemented by normative analysis and limited empirical insights. The goal is to critically assess the compatibility of India's legal framework with Online Dispute Resolution (ODR) in

<sup>11</sup> Supreme Court of India, *In Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic* (2020) 5 SCC 674.

<sup>12</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958); UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).

the context of cross-border commercial arbitration, and to propose legally sound and context-sensitive reforms.

### 6.1 Doctrinal Analysis

The doctrinal approach involves the close reading and interpretation of international and domestic legal instruments, institutional rules, case law, and scholarly literature. Core sources include:

- a. The Arbitration and Conciliation Act, 1996 (as amended),
- b. The New York Convention (1958),
- c. The UNCITRAL Model Law (1985, amended 2006),

Recent arbitral protocols such as the ICCA–NYC Bar–CPR Cybersecurity Protocol (2020)<sup>13</sup>.

Institutional rules of bodies like the ICC, LCIA, SIAC, and MCIA are analysed for their treatment of virtual hearings, e-disclosure, and remote evidence gathering<sup>14</sup>. Indian judicial decisions—especially those emerging from the COVID-19 period—will be studied to examine attitudes toward digital arbitration and procedural fairness.

### 6.2 Comparative Legal Study

Comparative analysis is central to this research. Jurisdictions such as Singapore, the UK, and the EU offer advanced models of virtual arbitration infrastructure. Singapore's legislative flexibility, combined with institutional innovation, has made it a digital arbitration hub<sup>15</sup>. The UK's LCIA and courts have provided procedural guidance for remote hearings<sup>16</sup>. The EU's experience with consumer ODR regulation

<sup>3</sup> ICCA, New York City Bar Association and CPR Institute, *Cybersecurity Protocol for International Arbitration* (2020).

<sup>14</sup> International Chamber of Commerce, *ICC Arbitration Rules* (2021); London Court of International Arbitration, Volume- 12 | Issue- 1 | Feb, 2026

*LCIA Rules* (2020); Singapore International Arbitration Centre, *SIAC Rules* (2016); Mumbai Centre for International Arbitration, *MCIA Rules* (2016).

<sup>15</sup> Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 3247– 3253.

<sup>16</sup> LCIA, ‘Guidance Notes on Remote Hearings’ (2020) <https://www.lcia.org> accessed 30 July 2025.

under Regulation 524/2013 demonstrates how technology and enforceability can be harmonised across jurisdictions<sup>17</sup>.

These international models will serve as benchmarks against which India’s progress and limitations will be assessed, with a focus on doctrinal consistency and institutional readiness.

### 6.3 Normative and Theoretical Evaluation

This component addresses whether India’s legal infrastructure is normatively aligned with international best practices. Core arbitration values—party autonomy, procedural fairness, and neutrality of technology—will be examined. The research also engages with theoretical frameworks from scholars such as **Maxi Scherer**, **Thomas Schultz**, and **Pablo Cortés**, who have critically explored the legitimacy of virtual hearings in maintaining arbitral due process and equality<sup>18</sup>.

### 6.4 Limited Empirical Support

While doctrinal in its core, the research will incorporate limited empirical materials— including caseload statistics, policy white papers, and institutional reports by bodies like the Vidhi Centre for Legal Policy, NITI Aayog, and Agami<sup>19</sup>.<sup>7</sup> Where available, insights from arbitration practitioners and ODR platform administrators will inform the assessment of feasibility and ground realities. This mixed approach ensures doctrinal rigour while remaining responsive to evolving arbitral practices in India and beyond.

## 7. Hypothesis

India’s current legal and institutional frameworks, though supportive of conventional arbitration, are not adequately aligned with the demands of Online Dispute Resolution in cross-border commercial contexts. However, through targeted reforms—such as

<sup>17</sup> Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes [2013] OJ L165/1.

<sup>18</sup> Maxi Scherer, ‘Remote Hearings in International Arbitration: Practical and Legal Challenges’ (2020) 36(4) *Arbitration International* 539; Thomas Schultz, ‘Legitimacy, Rights and the Online Resolution of Consumer Disputes’ (2004) 15 *Harvard Negotiation Law Review* 1.

<sup>19</sup> Vidhi Centre for Legal Policy, *Disputes in the Digital Age: Mapping the Future of ODR in India* (2021); NITI Aayog, *ODR Policy Plan for India* (2020); Agami, *ODR Landscape Report* (2020).

updating the Arbitration and Conciliation Act, issuing digital arbitration protocols, and harmonising with international best practices—India can overcome structural and procedural challenges to become a credible jurisdiction for virtual arbitration.

## 8. Expected Outcomes

A detailed legal assessment of the readiness of India’s arbitration framework— including its legislation, institutional practices, and jurisprudence—to support Online Dispute Resolution (ODR) in cross-border commercial disputes.

A comparative mapping of international best practices on virtual arbitration, particularly in jurisdictions like Singapore, the United Kingdom, and the European Union, with lessons drawn for Indian adaptation.

Identification of core challenges—legal, procedural, technological, and ethical—faced by Indian stakeholders (parties, counsel, arbitrators, and institutions) in adopting virtual arbitration practices.

Recommendations for legal and policy reform, including:

Procedural guidance on virtual hearings and document submission; Data protection and cybersecurity protocols;

Institutional standardisation for virtual arbitration platforms; Amendments to the Arbitration and Conciliation Act, 1996.

A proposed normative framework for integrating ODR into India’s cross-border commercial arbitration ecosystem—balancing innovation with principles of fairness, efficiency, and enforceability.

## 9. Significance of the Study

The significance of this study lies in its direct engagement with a rapidly evolving challenge: integrating Online Dispute Resolution (ODR) into India’s cross-border commercial arbitration regime in a manner that ensures procedural integrity, legal

enforceability, and technological adaptability. While ODR has gained international traction, India’s legal and institutional frameworks remain only partially responsive to the procedural demands of virtual arbitration, especially where foreign parties and cross-jurisdictional enforcement are concerned.

This research contributes doctrinally by analysing the gaps in the Arbitration and Conciliation Act, 1996, vis-à-vis the

requirements of virtual arbitration—such as remote hearings, digital submissions, data security, and AI-supported proceedings. It evaluates the readiness of institutions like MCIA and DIAC, not merely operationally but from a policy and normative standpoint. In doing so, it shifts the conversation from general ODR promotion to a targeted critique of India’s arbitration ecosystem in the cross-border digital context.

Practically, the study provides actionable guidance for Indian legislators, arbitral institutions, and policymakers on how to harmonise domestic laws with UNCITRAL standards, the New York Convention, and international institutional practices. It highlights not just the need for reform but proposes specific doctrinal, procedural, and infrastructural improvements—including model protocols, data protection frameworks, and training mechanisms for digital arbitration.

The research also fills a crucial gap in Indian legal scholarship by foregrounding the challenges of digital inequality, procedural consent, and technological neutrality in the arbitration process—issues that are often ignored in techno-centric reform discourse.

Finally, by building a normative and comparative roadmap for India’s integration into the global ODR landscape, this study could contribute to elevating India’s status as a preferred arbitral seat in Asia and globally, enhancing its competitiveness in international legal services and dispute resolution.

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